IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11898 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMAIL @ MUNIO VAHIDBHAI GARANA

Versus

DISTRICT MAGISTRATE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR SAMIR J DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/02/2001

ORAL JUDGEMENT

#. The petitioner by this petition under Article 226 of the Constitution of India is challenging the order of the District Magistrate Rajkot dated 21-9-2000 under which he was ordered to be detained as a bootlegger in exercise of powers under section 3(3) of Prevention of Antisocial Activities Act, 1985.

#. Challenging this order, the learned counsel for the petitioner raised manifold contentions but as this petition deserves to be accepted only on one ground, it

is not required to digest on all the contentions and give finding. It is contended that the last offence was registered against the petitioner on 4th April, 2000 and this order has been passed on 21-9-2000 and there is a delay of five months and 20 days in passing of the detention order and as such the same is bad. In support of her contention, she placed reliance on the decision of the Hon'ble Supreme Court in the case of Anand Prakash vs. State of U.P. reported in AIR 1990 SC 516.

#. Reply to the special civil application has not been filed. This petition was admitted on 22-11-2000. Learned counsel for the respondents prays for short adjournment to file reply to the special civil application but I do not find any justification in this prayer as more than sufficient time was available at their disposal in case the respondents really desired to file reply to the special civil application. For want of reply to the special civil application, the factual averment stand uncontroverted. This delay in passing of the detention order is fatal to action taken and only on this ground, the order of detention of the petitioner deserves to be quashed and set aside.

#. In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 21-9-2000 is quashed and set aside. The petitioner Ismail @ Munio Vahidbhai Garana, detenue at present in Nadiad District Jail at Nadiad, be set free forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

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zgs/-